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Attorneys for Defendant ARROWOOD Indemnity Company, f/k/a  
Royal Indemnity Company,  
as successor in interest to  
Royal Insurance Company of America  
(improperly sued as "Royal Insurance Company of America")

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - San Francisco Division

AIU INSURANCE COMPANY, a New  
York corporation,

Plaintiff

v.

ACCEPTANCE INSURANCE  
COMPANY, a Delaware corporation,  
TIG SPECIALTY INSURANCE  
COMPANY, a California corporation,  
ARROWOOD INDEMNITY  
COMPANY (f/k/a/ ROYAL  
INDEMNITY) ROYAL INSURANCE  
COMPANY OF AMERICA, a  
Delaware corporation, AMERICAN  
SAFETY RISK RETENTION GROUP,  
IND., a Vermont corporation, and  
DOES 1-10, INCLUSIVE,

Defendants.

Case No.: C 07 5491 PJH

ANSWER AND AFFIRMATIVE  
DEFENSES OF DEFENDANT  
ARROWOOD TO FIRST  
AMENDED COMPLAINT AND  
COUNTERCLAIM/CROSS-  
COMPLAINT

DEMAND FOR JURY TRIAL

COMPLAINT FILED:  
October 29, 2007

1 Defendant Arrowood Indemnity Company (f/k/a royal Indemnity Company,  
2 as successor-in-interest to Royal Insurance Company of America) ("Arrowood")  
3 hereby answers the First Amended Complaint for Declaratory Relief of Plaintiff  
4 AIU Insurance Company ("AIU") as follows:

5 **JURISDICTION**

6 1. Answering Paragraph 1 of the FAC, Arrowood lacks sufficient  
7 information to form a belief as to the truth of the allegations contained in  
8 Paragraph 1, and on that basis denies each and every allegation contained therein.

9 2. Answering Paragraph 2 of the FAC, Arrowood admits only that some  
10 of the underlying lawsuits which give rise to this lawsuit were filed in the County  
11 of San Mateo, California and denies each and every remaining allegation in  
12 Paragraph 2.

13 3. Answering Paragraph 3 of the FAC, Arrowood admits only that AIU  
14 is seeking declaratory relief and that it lacks sufficient information to form a belief  
15 as to the truth of the remaining allegations contained in Paragraph 3, and on that  
16 basis denies each and every allegation contained therein.

17 **PARTIES**

18 4. Answering Paragraph 4 of the FAC, Arrowood lacks sufficient  
19 information to form a belief as to the truth of allegations contained in Paragraph 4,  
20 and on that basis denies each and every allegation contained therein.

21 5. Answering Paragraph 5 of the FAC, Arrowood lacks sufficient  
22 information to form a belief as to the truth of allegations contained in Paragraph 5,  
23 and on that basis denies each and every allegation contained therein.

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1           6.     Answering Paragraph 6 of the FAC, Arrowood lacks sufficient  
2 information to form a belief as to the truth of allegations contained in Paragraph 6,  
3 and on that basis denies each and every allegation contained therein.

4           7.     Answering Paragraph 7 of the FAC, Arrowood admits only that it is a  
5 Delaware corporation, with its principal place of business in Charlotte, North  
6 Carolina and that it is authorized to, and does, business in California. Arrowood  
7 further admits that it was at all times herein mentioned, engaged in the business of  
8 insurance and admitted to the State of California to transact the business of  
9 insurance. Arrowood denies each and every other allegation of Paragraph 7.

10          8.     Answering Paragraph 8 of the FAC, Arrowood lacks sufficient  
11 information to form a belief as to the truth of allegations contained in Paragraph 8,  
12 and on that basis denies each and every allegation contained therein.

13          9.     Answering Paragraph 9 of the FAC, Arrowood lacks sufficient  
14 information to form a belief as to the truth of allegations contained in Paragraph 9,  
15 and on that basis denies each and every allegation contained therein.

16          10.    Answering Paragraph 10 of the FAC, Arrowood lacks sufficient  
17 information to form a belief as to the truth of allegations contained in Paragraph  
18 10, and on that basis denies each and every allegation contained therein.

19                               **VENUE**

20          11.    Answering Paragraph 11 of the FAC, Arrowood lacks sufficient  
21 information to form a belief as to the truth of allegations contained in Paragraph  
22 11, and on that basis denies each and every allegation contained therein.

23                               **THE INSURANCE POLICIES**

24          12.    Answering Paragraph 12 of the FAC, Arrowood state only that on  
25

1 information and belief, AIU issued excess policies to Rylock which were in effect  
2 from March 1, 1996 to March 1, 2002. Arrowood lacks sufficient information to  
3 form a belief as to the truth of allegations contained in Paragraph 12, and on that  
4 basis denies each and every allegation contained therein.

5 13. Answering Paragraph 13 of the FAC, Arrowood lacks sufficient  
6 information to form a belief as to the truth of allegations contained in Paragraph  
7 13, and on that basis denies each and every allegation contained therein.

8 14. Answering Paragraph 14 of the FAC, Arrowood lacks sufficient  
9 information to form a belief as to the truth of allegations contained in Paragraph  
10 14, and on that basis denies each and every allegation contained therein.

11 15. Answering Paragraph 15 of the FAC, Arrowood lacks sufficient  
12 information to form a belief as to the truth of allegations contained in Paragraph 15  
13 and on that basis denies each and every allegation contained therein.

14 16. Answering Paragraph 16 of the FAC, Arrowood admits only that it  
15 issued the following insurance policies for the periods indicated: (1) Policy No.  
16 PTY 441053 effective for the period March 1, 1996 to March 1, 1997; (2) Policy  
17 No. PTS 443208 effective for the period March 1, 1996 to March 1, 1998; (3)  
18 Policy No. PTR 457882 effective for the period March 1, 1998 to March 1, 1999;  
19 and (4) Policy No. PTR 4578820099 effective for the period March 1, 1999 to  
20 March 1, 2000, each which policy speaks for itself. Arrowood denies each and  
21 every remaining allegation in Paragraph 16.

22 17. Answering Paragraph 17 of the FAC, Arrowood lacks sufficient  
23 information to form a belief as to the truth of allegations contained in Paragraph  
24 17, and on that basis denies each and every allegation contained therein.

1           18. Answering Paragraph 18 of the FAC, Arrowood lacks sufficient  
2 information to form a belief as to the truth of allegations contained in Paragraph  
3 18, and on that basis denies each and every allegation contained therein.

4           19. Answering Paragraph 19 of the FAC, Arrowood lacks sufficient  
5 information to form a belief as to the truth of allegations contained in Paragraph  
6 19, and on that basis denies each and every allegation contained therein.

7                           **THE UNDERLYING EVENTS**

8           20. Answering Paragraph 20 of the FAC, Arrowood admits only that  
9 Rylock was engaged in the business of window manufacturing; that Rylock is  
10 alleged to have installed windows in home located in California and elsewhere;  
11 and that Rylock has been named as defendant and/or cross-defendant in lawsuits in  
12 which homeowners alleged that Rylock's windows were defective and that such  
13 defects lead to water intrusion resulting in property damage. Except as expressly  
14 admitted herein, Arrowood lacks sufficient information to form a belief as to the  
15 truth of allegations contained in Paragraph 20, and on that basis denies each and  
16 every allegation contained therein.

17           21. Answering Paragraph 21 of the FAC, Arrowood admits only that  
18 Rylock tendered the defense and indemnity of certain lawsuits in which Rylock  
19 was named a defendant and/or cross-defendant to Arrowood. Except as expressly  
20 admitted herein, Arrowood lacks sufficient information to form a belief as to the  
21 truth of allegations contained in Paragraph 21, and on that basis denies each and  
22 every allegation contained therein.

23           22. Answering Paragraph 22 of the FAC, Arrowood lacks sufficient  
24 information to form a belief as to the truth of allegations contained in Paragraph  
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1 22, and on that basis denies each and every allegation contained therein.

2 23. Answering Paragraph 23 of the FAC, Arrowood admits only that  
3 Rylock referenced the court decision *Armstrong World Industries, Inc. v. Aetna*  
4 *Casualty & Surety Co*, (1996) 45 Cal.App.4<sup>th</sup> 1 in certain correspondence it sent to  
5 Arrowood as well as to other insurance companies and denies each and every other  
6 allegation contained in Paragraph 23 of the FAC.

7 24. Answering Paragraph 24 of the FAC, Arrowood admits only that the  
8 limits of the Arrowood policies Policy No. PTY 441053 effective for the period  
9 March 1, 1996 to March 1, 1997, Policy No. PTS 443208 effective for the period  
10 March 1, 1996 to March 1, 1998, Policy No. PTR 457882 effective for the period  
11 March 1, 1998 to March 1, 1999, and Policy No. PTR 4578820099 effective for  
12 the period March 1, 1999 to March 1, 2000, each which policy speaks for itself,  
13 have been exhausted through payment of settlements or judgments made on behalf  
14 of Rylock or other insured entities and that upon exhaustion of the Arrowood  
15 policies the AIU excess policies are triggered requiring AIU to defend and  
16 indemnify Rylock in all outstanding lawsuits and claims. Rylock further admits it  
17 provided AIU with notice of such exhaustion. Except as expressly admitted  
18 herein, Arrowood lacks sufficient information to form a belief as to the truth of  
19 allegations contained in Paragraph 24, and on that basis denies each and every  
20 allegation contained therein.

21 25. Answering Paragraph 25 of the FAC, Arrowood admits only that the  
22 limits of the Arrowood policies Policy No. PTY 441053 effective for the period  
23 March 1, 1996 to March 1, 1997, Policy No. PTS 443208 effective for the period  
24 March 1, 1996 to March 1, 1998, Policy No. PTR 457882 effective for the period  
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1 March 1, 1998 to March 1, 1999, and Policy No. PTR 4578820099 effective for  
2 the period March 1, 1999 to March 1, 2000, each which policy speaks for itself,  
3 have been exhausted through payment of settlements or judgments made on behalf  
4 of Rylock. Arrowood denies that its policies have not been properly exhausted and  
5 denies that the Arrowood policies may be “refreshed” by any amounts that may be  
6 owed to Rylock by any other insurer upon exhaustion of the Arrowood policies the  
7 AIU excess policies are triggered requiring AIU to defend and indemnify Rylock  
8 in all outstanding lawsuits and claims. Arrowood also asserts that except as  
9 expressly admitted herein, Arrowood lacks sufficient information to form a belief  
10 as to the truth of allegations contained in Paragraph 25, and on that basis denies  
11 each and every allegation contained therein.

12 **FIRST CLAIM FOR RELIEF**

13 **(For Declaratory Relief Against American Safety)**

14 26. Answering Paragraph 26 of the FAC, Arrowood repeats and  
15 incorporates by reference its answers to Paragraphs 1-25 above as if they were set  
16 forth herein.

17 27. Answering Paragraph 27 of the FAC, Arrowood lacks sufficient  
18 information to form a belief as to the truth of allegations contained in Paragraph  
19 27, as they are directed only to American Safety and not to Arrowood and on that  
20 basis denies each and every allegation contained therein.

21 28. Answering Paragraph 28 of the FAC, Arrowood has no obligation to  
22 either admit or deny such allegations contained therein as they are directed only to  
23 American Safety and not to Arrowood and on that basis denies each and every  
24 allegation contained therein.

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1           29. Answering Paragraph 29 of the FAC, Arrowood lacks sufficient  
2 information to form a belief as to the truth of allegations contained in Paragraph  
3 29, as they are directed only to American Safety and not to Arrowood and on that  
4 basis denies each and every allegation contained therein.

5                                   **SECOND CLAIM FOR RELIEF**

6                   **(For Declaratory Relief Against Acceptance, TIG, Arrowood, American**  
7                                   **Safety and DOES 1-10)**

8           30. Answering Paragraph 30 of the FAC, Arrowood repeats and  
9 incorporates by reference its answers to Paragraphs 1-29, above as if set forth fully  
10 herein.

11           31. Answering Paragraph 31 of the FAC, Arrowood admits only that there  
12 is a dispute or controversy between the parties regarding AIU's coverage  
13 obligations to Rylock and whether the Arrowood policies have been exhausted.  
14 Arrowood denies each and every remaining allegation contained in Paragraph 31.

15           32. Answering Paragraph 32 of the FAC, Arrowood admits only that there  
16 is a dispute or controversy between the parties regarding AIU's coverage  
17 obligations to Rylock and whether the Arrowood policies have been exhausted.  
18 Arrowood denies each and every remaining allegation contained in Paragraph 32.

19           33. Answering Paragraph 33 of the FAC, Arrowood admits only that there  
20 is a dispute or controversy between the parties regarding AIU's coverage  
21 obligations to Rylock and whether the Arrowood policies have been exhausted.  
22 Arrowood denies that the AIU excess policies will not be triggered upon  
23 exhaustion of the Arrowood policies. Arrowood contends that AIU to defend and  
24 indemnify Rylock in all outstanding lawsuits and claims filed against Rylock upon  
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1 exhaustion of the Arrowood policies. Arrowood denies that the AIU excess  
2 policies will not be triggered upon exhaustion of the Arrowood policies.  
3 Arrowood contends that AIU to defend and indemnify Rylock in all outstanding  
4 lawsuits and claims filed against Rylock upon exhaustion of the Arrowood  
5 policies. Arrowood denies each and every remaining allegation contained in  
6 Paragraph 33.

7 34. Answering Paragraph 34 of the FAC, Arrowood lacks sufficient  
8 information to form belief as to the truth of allegations contained in Paragraph 34,  
9 and on that basis denies each and every allegation contained therein.

10 35. Answering Paragraph 35 of the FAC, Arrowood admits only that there  
11 is a dispute or controversy between the parties regarding AIU's coverage  
12 obligations to Rylock and whether the Arrowood policies have been exhausted.  
13 Arrowood denies each and every remaining allegation contained in Paragraph 35.

14 **THIRD CLAIM FOR RELIEF**

15 **(for Declaratory Relief Against Royal and DOES 1-10)**

16 36. Answering Paragraph 36 of the FAC, Arrowood repeat and  
17 incorporates by reference its answers to paragraphs 1-35 above as it set forth fully  
18 herein.

19 37. Answering Paragraph 37 of the FAC, Arrowood admits only that the  
20 limits of the Arrowood policies Policy No. PTY 441053 effective for the period  
21 March 1, 1996 to March 1, 1997, Policy No. PTS 443208 effective for the period  
22 March 1, 1996 to March 1, 1998, Policy No. PTR 457882 effective for the period  
23 March 1, 1998 to March 1, 1999, and Policy No. PTR 4578820099 effective for  
24 the period March 1, 1999 to March 1, 2000, each which policy speaks for itself,  
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1 and each of which has been properly exhausted through payment of settlements or  
2 judgments made on behalf of Rylock and that upon exhaustion of the Arrowood  
3 policies the AIU excess policies are triggered requiring AIU to defend and  
4 indemnify Rylock in all outstanding lawsuits and claims. Rylock further admits it  
5 provided AIU with notice of such exhaustion. Except as expressly admitted  
6 herein, Arrowood lacks sufficient information to form a belief as to the truth of  
7 allegations contained in Paragraph 37, and on that basis denies each and every  
8 allegation contained therein.

9       38. Answering Paragraph 38 of the FAC, Arrowood admits only that the  
10 limits of the Arrowood policies Policy No. PTY 441053 effective for the period  
11 March 1, 1996 to March 1, 1997, Policy No. PTS 443208 effective for the period  
12 March 1, 1996 to March 1, 1998, Policy No. PTR 457882 effective for the period  
13 March 1, 1998 to March 1, 1999, and Policy No. PTR 4578820099 effective for  
14 the period March 1, 1999 to March 1, 2000, each which policy speaks for itself,  
15 and each of which has been properly exhausted through payment of settlements or  
16 judgments made on behalf of Rylock and that upon exhaustion of the Arrowood  
17 policies the AIU excess policies are triggered requiring AIU to defend and  
18 indemnify Rylock in all outstanding lawsuits and claims. Rylock further admits it  
19 provided AIU with notice of such exhaustion. Except as expressly admitted  
20 herein, Arrowood lacks sufficient information to form a belief as to the truth of  
21 allegations contained in Paragraph 38, and on that basis denies each and every  
22 allegation contained therein.

23       39. Answering Paragraph 39 of the FAC, Arrowood admits only that the  
24 limits of the Arrowood policies Policy No. PTY 441053 effective for the period  
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1 March 1, 1996 to March 1, 1997, Policy No. PTS 443208 effective for the period  
2 March 1, 1996 to March 1, 1998, Policy No. PTR 457882 effective for the period  
3 March 1, 1998 to March 1, 1999, and Policy No. PTR 4578820099 effective for  
4 the period March 1, 1999 to March 1, 2000, each which policy speaks for itself,  
5 and each of which has been properly exhausted through payment of settlements or  
6 judgments made on behalf of Rylock and that upon exhaustion of the Arrowood  
7 policies the AIU excess policies are triggered requiring AIU to defend and  
8 indemnify Rylock in all outstanding lawsuits and claims. Rylock further admits it  
9 provided AIU with notice of such exhaustion. Except as expressly admitted  
10 herein, Arrowood lacks sufficient information to form a belief as to the truth of  
11 allegations contained in Paragraph 39, and on that basis denies each and every  
12 allegation contained therein.

13 40. Answering Paragraph 40 of the FAC, Arrowood admits only that there  
14 is a dispute or controversy between the parties regarding AIU's coverage  
15 obligations to Rylock and whether the Arrowood policies have been exhausted.  
16 Arrowood denies that the AIU excess policies will not be triggered upon  
17 exhaustion of the Arrowood policies. Arrowood contends that AIU has a duty to  
18 defend and indemnify Rylock and all outstanding lawsuits and claims filed against  
19 Rylock and/or additional insureds qualifying for coverage due to the exhaustion of  
20 the Arrowood policies. Except as expressly admitted herein, Arrowood lacks  
21 sufficient information to form a belief as to the truth of allegations contained in  
22 Paragraph 40, and on that basis denies each and every allegation contained herein.

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**FOURTH CLAIM FOR RELIEF**

**(For Equitable Indemnity and Contribution Against Acceptance, TIG, Royal, American Safety Risk, American Safety Indemnity, and DOES 1-10)**

41. Answering paragraph 41 of the FAC, Arrowood repeats and incorporates by reference its answers to paragraphs 1-40 above as it set forth fully herein.

42. Answering Paragraph 42 of the FAC, Arrowood admits only that there is a dispute or controversy between the parties regarding AIU's coverage obligations to Rylock and whether the Arrowood policies have been exhausted. Arrowood denies each and every remaining allegation contained in Paragraph 42.

43. Answering Paragraph 43 of the FAC, Arrowood admits only that there is a dispute or controversy between the parties regarding AIU's coverage obligations to Rylock and whether the Arrowood policies have been exhausted. Arrowood denies each and every remaining allegation contained in Paragraph 43.

**FIFTH CLAIM FOR LEAVE**

**(For Equitable Subrogation Against Acceptance, TIG, Royal, American Safety Risk, American Safety Indemnity and DOES 1-10)**

44. Answering Paragraph 44 of the FAC, Arrowood repeats and incorporates by reference its answers to Paragraphs 1-43 above as it set forth fully herein.

45. Answering Paragraph 45 of the FAC, Arrowood admits only that there is a dispute or controversy between the parties regarding the parties coverage obligations to Rylock and denies each and every remaining allegation contained on Paragraph 45.

**SIXTH CLAIM FOR RELIEF**

**(For Waiver and Estoppel Against Royal and DOES 1-10)**

46. Answering Paragraph 46 of the FAC, Arrowood repeats and incorporates by reference its answers to Paragraphs 1-45 above as it set forth fully herein.

47. Answering Paragraph 47 of the FAC, Arrowood admits only that there is a dispute or controversy between the parties regarding AIU's coverage obligations to Rylock and whether the Arrowood policies have been exhausted. Arrowood denies each and every remaining allegation contained on Paragraph 32.

48. Answering Paragraph 48 of the FAC, Arrowood admits only that there is a dispute or controversy between the parties regarding AIU's coverage obligations to Rylock and whether the Arrowood policies have been exhausted. Arrowood denies each and every remaining allegation contained on Paragraph 48.

49. Answering Paragraph 49 of the FAC, Arrowood admits only that there is a dispute or controversy between the parties regarding AIU's coverage obligations to Rylock and whether the Arrowood policies have been exhausted. Arrowood denies each and every remaining allegation contained on Paragraph 49.

**PRAYER**

Arrowood denies that AIU is entitled to the relief sought by its FAC.

**AFFIRMATIVE DEFENSES**

By way of further answer, and by way of affirmative defenses, Arrowood alleges as follows:

**FIRST AFFIRMATIVE DEFENSE**

1. AIU's claims against Arrowood are barred, in whole or in part, to the

1 extent that AIU fails to state a claim against Arrowood upon which relief may be  
2 granted.

3 **SECOND AFFIRMATIVE DEFENSE**

4 2. AIU's claims against Arrowood are barred, in whole or in part, to the  
5 extent that AIU fails to state facts sufficient to constitute a cause of action against  
6 Arrowood.

7 **THIRD AFFIRMATIVE DEFENSE**

8 3. AIU's claims against Arrowood against Arrowood are barred because  
9 the limits of the Arrowood policies Policy No. PTY 441053 effective for the period  
10 March 1, 1996 to March 1, 1997, Policy No. PTS 443208 effective for the period  
11 March 1, 1996 to March 1, 1998, Policy No. PTR 457882 effective for the period  
12 March 1, 1998 to March 1, 1999, and Policy No. PTR 4578820099 effective for  
13 the period March 1, 1999 to March 1, 2000, each which policy speaks for itself,  
14 and each of which has been properly exhausted through payment of settlements or  
15 judgments Arrowood has made on behalf of Rylock and/or additional insurers  
16 under the Arrowood policies.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 4. AIU's claims against Arrowood are barred because Arrowood has  
19 no obligation to obtain contribution from any other insurance company, person or  
20 entity relative to the defense and indemnification of Rylock and/or additional  
21 insured under the Arrowood Policies for amounts incurred prior to exhaustion of  
22 the Arrowood policies.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 5. AIU's claims against Arrowood are barred because, once the  
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1 Arrowood policies have been exhausted through payment of settlements or  
2 judgments, Arrowood has no further obligations to defend or indemnify Rylock  
3 or any additional insured under the Arrowood policies.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 6. AIU's claims against Arrowood are barred, in whole or in part,  
6 pursuant to the terms, provisions, definitions, conditions, exclusions,  
7 endorsements, and limitations set forth in Arrowood Policies.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 7. AIU's claims against Arrowood are barred because once the  
10 Arrowood policies have been exhausted through payment of settlements or  
11 judgment, they may not be retroactively "refreshed" by any amounts that may be  
12 owed to Rylock by any other insurer.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 8. AIU's claims against Arrowood are barred, in whole or in part, to the  
15 extent the applicable statutes of limitations have expired.

16 **NINTH AFFIRMATIVE DEFENSE**

17 9. AIU's claims against Arrowood are barred, in whole or in part, to the  
18 extent the doctrine of laches applies.

19 **TENTH AFFIRMATIVE DEFENSE**

20 10. AIU's claims against Arrowood are barred, in whole or in part, to the  
21 extent the doctrine of waiver applies.

22 **ELEVENTH AFFIRMATIVE DEFENSE**

23 11. AIU's claims against Arrowood are barred, in whole or in part, to the  
24 extent the doctrine of estoppel applies.  
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**TWELFTH AFFIRMATIVE DEFENSE**

12. AIU's claims against Arrowood are barred, in whole or in part, to the extent AIU failed to exercise reasonable diligence to mitigate its damages.

**THIRTEENTH AFFIRMATIVE DEFENSE**

13. AIU has suffered no damages.

**FOURTEENTH AFFIRMATIVE DEFENSE**

14. AIU's claims against Arrowood are barred, in whole or in part, to the extent the doctrine of unclean hands applies.

**FIFTEENTH AFFIRMATIVE DEFENSE**

15. AIU's claims against Arrowood are barred, in whole or in part, to the extent any duty or performance of Arrowood has been excused by reason of failure of consideration, breach, prevention of performance, frustration of purpose, and/or acceptance.

**SIXTEENTH AFFIRMATIVE DEFENSE**

16. AIU's claims against Arrowood are barred, in whole or in part, to the extent any duty or obligation that Arrowood may have had under contract or by operation of law has been performed, discharged, excused, or rendered impossible or impractical to perform by AIU and/or other persons or entities.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

17. AIU's claims against Arrowood are barred, in whole or in part, to the extent AIU seeks reimbursement under the Arrowood Policies for obligations assumed, or monies voluntarily paid, by AIU.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

18. Arrowood reserves its right to assert further and additional affirmative

1 defenses and policy defenses based upon information that may be provided in  
2 discovery or other investigation in the course of this litigation.

3 WHEREFORE, having fully answered AIU's FAC, and having asserted its  
4 affirmative defenses thereto, Arrowood respectfully prays for judgment against  
5 AIU as follows:

6 1. That AIU take nothing against Arrowood by reason of the FAC on file  
7 herein;

8 2. That this Court adjudge, determine and decree that AIU is not entitled  
9 to the relief sought in its FAC;

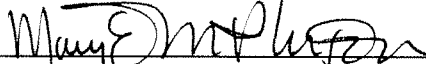
10 3. That AIU is not entitled to cost of suit, reasonable attorneys' fees or  
11 any other relief as to its FAC;

12 4. That this Court adjudge, determine and decree that Arrowood is  
13 entitled to its costs and disbursements incurred in this action including, but not  
14 limited to, reasonable attorneys' fees; and

15 5. For such other and further relief as the Court deems just and proper.

16 Dated: July 10, 2007

17 TRESSLER, SODERSTROM, MALONEY & PRIESS, LLP

18  
19 By:   
20 Mary E. McPherson  
21 Linda M. Corrie  
22 Attorneys for Defendant  
23 Arrowood Indemnity Company (f/k/a Royal Indemnity  
24 Company as successor in interest to Royal Insurance  
25 Company of America)

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### **COUNTERCLAIM AND CROSS-CLAIM**

In accordance with Federal Rule of Civil Procedure 13, defendant, counterclaimant, and cross-claimant Arrowood Indemnity Company (f/k/a Royal Indemnity Company as successor-in-interest to Royal Insurance Company of America) ("Arrowood") alleges claims against plaintiff and counter-defendant AIU Insurance Company ("AIU") and, in the alternative, against defendants and cross-defendants Acceptance Insurance Company ("Acceptance"), TIG Specialty Insurance Company ("TIG"), American Safety Risk Retention Group, Inc. ("American Safety Risk"), and American Safety Indemnity Company ("American Safety Indemnity") as follows:

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### **JURISDICTION**

1. Arrowood's counterclaim against AIU and, in the alternative, Arrowood's crossclaim against Acceptance, TIG, American Safety Risk, and American Safety Indemnity arises under Federal Rule of Civil Procedure 13(a) and 13(g), and this Court has jurisdiction under 28 U.S.C. § 1332 and 28 U.S.C. § 1367.

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### **VENUE**

2. Venue is proper because this is a compulsory counterclaim under Federal Rule of Civil Procedure 13(a), and Arrowood is informed and believes that this is the proper venue under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. Arrowood is further informed and believes that AIU, Acceptance, TIG, American Safety Risk, and American Safety Indemnity will admit to the jurisdiction of this

1 court.

2 **THE PARTIES**

3 3. Arrowood is a Delaware corporation, with its principal place of  
4 business in Charlotte, North Carolina. Arrowood is authorized to do, and is doing,  
5 business in California.

6 4. Arrowood is informed and believes, and on that basis alleges, that  
7 AIU is a New York Corporation, with its principal place of business in New York,  
8 New York. AIU is authorized to do, and is doing, business in California.

9 5. Arrowood is informed and believes, and on that basis alleges, that  
10 Acceptance is a Delaware corporation, with its principal place of business in  
11 Omaha, Nebraska. Acceptance is authorized to do, and is doing, business in  
12 California. Acceptance is, and was at all times herein mentioned, engaged in the  
13 business of insurance and is admitted in the State of California to transact the  
14 business of insurance.

15 6. Arrowood is informed and believes, and on that basis alleges, that  
16 TIG is a California corporation, with its principal place of business in Irving,  
17 Texas. TIG is authorized to do, and is doing, business in California. TIG is, and  
18 was at all times herein mentioned, engaged in the business of insurance and is  
19 admitted in the State of California to transact the business of insurance.

20 7. Arrowood is informed and believes, and based thereon alleges, that  
21 American Safety Indemnity is a Vermont corporation, with its principal place of  
22 business in Atlanta, Georgia. American Safety Indemnity is authorized to do, and  
23 is doing business in California. American Safety Indemnity is, and was at all times  
24 herein mentioned, engaged in the business of insurance and is admitted in the State  
25

1 of California to transact the business of insurance.

2 Arrowood denies that the AIU excess policies will not be triggered upon  
3 exhaustion of the Arrowood policies. Arrowood contends that AIU to defend and  
4 indemnify Rylock in all outstanding lawsuits and claims filed against Rylock upon  
5 exhaustion of the Arrowood Policies.

### 6 **THE INSURANCE POLICIES**

7 9. Arrowood issued the following primary commercial general liability  
8 insurance policies to Rylock Company, Ltd. ("Rylock") for the periods indicated:  
9 (1) policy no. PTY441053 effective March 1, 1996 to March 1, 1997; (2) policy  
10 no. PTS443208 effective March 1, 1997 to March 1, 1998; (3) policy no.  
11 PTR457882 effective March 1, 1998 to March 1, 1999 and (4) policy no. PTR-  
12 457882009 effective March 1, 1999 to March 1, 2000 (collectively, the "Arrowood  
13 Policies.") A true and correct copy of the Arrowood Policies are attached hereto as  
14 Exhibits A, B, C, and D and are incorporated by reference herein as though set  
15 forth in full.

16 10. Arrowood is informed and believes, and on that basis alleges, that  
17 AIU issued the following excess liability policies to Rylock for the periods  
18 indicated: (1) policy no. BE 309-29-74 effective March 1, 1996 to March 1, 1998;  
19 and (2) BE 357-20-18 effective March 1, 1998 to March 1, 2002 (collectively the  
20 "AIU Policies"). The AIU Policies are attached hereto as Exhibits E and F and are  
21 incorporated by reference herein as though set forth in full.

22 11. Arrowood is informed and believes, and on that basis alleges, that  
23 Acceptance issued the following primary commercial general liability insurance  
24 policies to Rylock for the periods indicated: (1) policy no. C2CG0053 effective  
25



1 March 1, 1992 to March 1, 1993; (2) policy no. C93G0194 effective March 1,  
2 1993 to March 1, 1994; (3) policy no. C94G0370 effective March 1, 1994 to  
3 March 1, 1995; and (4) policy no. C95CG60598 effective March 1, 1995 to March  
4 1, 1996 (collectively the "Acceptance Policies"). The Acceptance Policies are  
5 attached hereto as Exhibits G, H, I and J and are incorporated by reference herein  
6 as though set forth in full.

7 12. Arrowood is informed and believes, and on that basis alleges, that  
8 TIG issued primary general liability policy no. 3135280 effective March 1, 1995 to  
9 March 1, 1996 to Rylock ("TIG Policy"). The TIG Policy is attached hereto as  
10 Exhibit K and is incorporated by reference herein as though set forth in full.

11 13. Arrowood is informed and believes, and on that basis alleges, that  
12 American Safety Risk issued primary general liability policy no. XGI 00-1462-001  
13 effective March 1, 2000 to March 1, 2001 to Rylock ("American Safety Risk  
14 Policy"). The American Safety Risk Policy is attached hereto as Exhibit L and is  
15 incorporated by reference herein as though set forth in full.

16 14. Arrowood is informed and believes, and on that basis alleges, that  
17 American Safety Indemnity issued general liability policy no. XGI 01-1462-002  
18 effective March 1, 2001 to March 1, 2002 to Rylock ("American Safety Indemnity  
19 Policy") The American Safety Indemnity Policy is attached hereto as Exhibit M  
20 and is incorporated by reference herein as though set forth in full.

### 21 **THE UNDERLYING EVENTS**

22 15. Arrowood is informed and believes, and on that basis alleges, that  
23 Rylock was engaged in the business of window manufacturing. Arrowood is  
24 informed and believes that Rylock windows were installed in numerous homes in  
25

1 California and elsewhere.

2 16. Arrowood is informed and believes that Rylock has been named as  
3 defendant and/or cross-defendant in hundreds of lawsuits and/or has had claims  
4 made against it ("Rylock Actions") in which homeowners have alleged that  
5 Rylock's windows were defective and that such defects lead to water intrusion  
6 resulting in property damage during the effective periods of the policies issued by  
7 Arrowood, AIU, Acceptance, TIG, American Safety Risk, and American Safety  
8 Indemnity.

9 17. Arrowood is informed and believes that entities qualifying as  
10 additional insureds under the Arrowood Policies ("Additional Insureds") have been  
11 named as defendants and/or cross-defendants in hundreds of lawsuits and/or has  
12 had claims made against it in the Rylock Actions.

13 18. Arrowood defended and indemnified Rylock and/or Additional  
14 Insureds under the Arrowood Policies in the Rylock Actions.

15 19. On November 12, 2007, the Arrowood Policies were exhausted  
16 through payment of settlement or judgments made on behalf of Rylock and/or  
17 Additional Insureds in the Rylock Actions.

18 20. In late January of 2008 Arrowood confirmed exhaustion of all four  
19 Arrowood Policies. On February 4, 2008, Arrowood advised AIU that the  
20 Arrowood Policies had been exhausted as of November 12, 2007, that Arrowood  
21 had no further obligation to defend or indemnify Rylock under the Arrowood  
22 Policies for any claims, suits or actions against Rylock, that Arrowood is not  
23 responsible for any defense or indemnity amounts incurred, but not paid, on or  
24 after November 12, 2007, and that AIU which issued the excess policies directly  
25

1 above the exhausted Arrowood Policies, is responsible to immediately assume the  
2 defense and indemnification of Rylock on all outstanding claims, action or suits  
3 against Rylock.

4 21. A copy of Arrowood's Loss Run Report which evidenced actual  
5 exhaustion of all Arrowood Policies by payments of settlement or judgment was  
6 provided to AIU, Acceptance, TIG, American Safety Risk, and American Safety  
7 Indemnity.

8 22. A copy of Arrowood's Claim List, which included claims under  
9 which Arrowood made payments of settlement or judgment on behalf of Rylock  
10 and/or Additional Insureds was provided to AIU, Acceptance, TIG, American  
11 Safety Risk, and American Safety Indemnity.

12 23. A copy of Arrowood's list of claims located at Data Chamber Record  
13 Management and a copy of a list of claims located at NovaPro Risk Solutions was  
14 provided to AIU, Acceptance, TIG, American Safety Risk, and American Safety  
15 Indemnity.

16 24. Arrowood has no present obligation to defend or indemnify Rylock  
17 and/or any Additional Insured in the outstanding Rylock Actions because the  
18 Arrowood Policies have been exhausted since November 12, 2007.

19 25. Arrowood asserts that AIU, which issued the excess policies directly  
20 above the exhausted Arrowood Policies, is responsible to immediately assume the  
21 defense and indemnification of Rylock and any Additional Insured on all  
22 outstanding claims, actions, or suits against Rylock.

23 26. Arrowood asserts that it is entitled to an amount in excess of \$400,000  
24 in reimbursement from AIU for all amounts Arrowood paid in defense or  
25

1 indemnity on behalf of Rylock and/or any Additional Insured in the Rylock  
2 Actions under the Arrowood Policies which were incurred on or after November  
3 12, 2007.

4 27. Alternatively, Arrowood asserts that it is entitled to an amount in  
5 excess of \$400,000 in reimbursement from Acceptance, TIG, American Safety  
6 Risk and/or American Safety Indemnity for all amounts Arrowood paid in defense  
7 or indemnity on behalf of Rylock and/or any Additional Insured in the Rylock  
8 Actions under the Arrowood Policies which were incurred on or after November  
9 12, 2007.

10 **FIRST CLAIM FOR RELIEF**

11 **(For Declaratory Relief Against AIU**

12 **with Respect to the Exhaustion of the Arrowood Policies)**

13 28. Arrowood repeats each and every allegation contained in paragraphs 1  
14 through 27 of this Counterclaim/Cross-Claim and incorporates them as though  
15 fully set forth herein.

16 29. Arrowood has no obligation to defend or indemnify Rylock, and/or  
17 any Additional Insured in the outstanding Rylock Actions because the Arrowood  
18 Policies have been exhausted since November 12, 2007.

19 30. An actual controversy has now arisen and exists between Arrowood  
20 on the one hand, and AIU on the other hand, concerning Arrowood's rights and  
21 duties under the Arrowood Policies in connection with the Rylock Actions.

22 31. Arrowood seeks a judicial declaration that it is not obligated to defend  
23 and indemnify Rylock, and/or any Additional Insured in the Rylock Actions  
24 because the Arrowood Policies exhausted on November 12, 2007.

**SECOND CLAIM FOR RELIEF**

**(For Declaratory Relief Against AIU with Respect to Its Obligation To Defend and Indemnify Rylock and/or Any Additional Insured)**

32. Arrowood repeats each and every allegation contained in paragraphs 1 through 31 of this counterclaim/cross-claim and incorporates them as though fully set forth herein.

33. AIU has an obligation to defend and indemnify Rylock and any Additional Insured in the outstanding Rylock Actions under the AIU Excess Policies because the Arrowood Policies have been exhausted since November 12, 2007.

34. An actual controversy has now arisen and exists between Arrowood on the one hand, and AIU on the other hand, concerning AIU's duties and obligations under the AIU Policies in connection with the Rylock Actions.

35. Arrowood seeks a judicial declaration that AIU is obligated to defend and indemnify Rylock and any Additional Insured in the Rylock Actions under the AIU Policies because the Arrowood Policies exhausted on November 12, 2007.

**THIRD CLAIM FOR RELIEF**

**(For Equitable Indemnity and Contribution Against AIU)**

36. Arrowood repeats each and every allegation contained in paragraphs 1 through 35 of this counterclaim/cross-complaint and incorporates them as though fully set forth herein.

37. The Arrowood Policies exhausted on November 12, 2007. Therefore, Arrowood is not responsible for any defense or indemnity costs incurred on behalf of Rylock and/or any Additional Insured in the Rylock Actions under the

1 Arrowood Policies on or after November 12, 2007.

2 38. Arrowood has paid in excess of \$400,000 in defense and indemnity  
3 costs on behalf of Rylock and/or Additional Insureds in the Rylock Actions under  
4 the Arrowood Policies which were incurred on or after November 12, 2007.

5 39. Exhaustion of the Arrowood Policies on November 12, 2007 triggered  
6 AIU's obligation under the AIU Policies to provide Rylock and any Additional  
7 Insured with defense and indemnity in the Rylock Actions.

8 40. Arrowood is entitled to in excess of \$400,000 in reimbursement from  
9 AIU for all amounts Arrowood paid in defense or indemnity on behalf of Rylock  
10 and/or Additional Insured in the Rylock Actions under the Arrowood Policies  
11 which were incurred on or after November 12, 2007.

12 41. An actual controversy has now arisen and exists between Arrowood  
13 on the one hand, and AIU on the other hand, concerning Arrowood's rights and  
14 duties under the Arrowood Policies in connection with the Rylock Actions.

15 **FOURTH CLAIM FOR RELIEF**

16 **(In the Alternative, For Equitable Indemnity and Contribution Against**  
17 **Acceptance, TIG, American Safety Risk, and American Safety Indemnity)**

18 42. Arrowood repeats each and every allegation contained in paragraphs 1  
19 through 41 of this counterclaim/cross-claim and incorporates them as though fully  
20 set forth herein.

21 43. The Arrowood Policies exhausted on November 12, 2007. Therefore,  
22 Arrowood is not responsible for any defense or indemnity costs incurred on behalf  
23 of Rylock and/or any Additional Insured in the Rylock Actions under the  
24 Arrowood Policies on or after November 12, 2007.

25



1           44. Arrowood paid in excess of \$400,000 in defense and indemnity costs  
2 on behalf of Rylock and/or Additional Insureds in the Rylock Actions under the  
3 Arrowood Policies which were incurred on or after November 12, 2007.

4           45. Exhaustion of the Arrowood Policies on November 12, 2007 triggered  
5 AIU's obligation under the AIU Policies, or in the alternative, Acceptance, TIG,  
6 American Safety Risk, and American Safety Indemnity's obligations under the  
7 Acceptance Policies, the TIG Policy, the American Safety Risk Policy and the  
8 American Safety Indemnity Policy to provide Rylock and any Additional Insured  
9 with defense and indemnity in the Rylock Actions.

10           46. If the court determines Arrowood is not entitled to reimbursement  
11 from AIU, then Arrowood, in the alternative, is entitled to in excess of \$400,000 in  
12 reimbursement from Acceptance, TIG, American Safety Risk, and American  
13 Safety Indemnity for all amounts Arrowood paid in defense or indemnity on behalf  
14 of Rylock and/or Additional Insured in the Rylock Actions under the Arrowood  
15 Policies which were incurred on or after November 12, 2007.

16           WHEREFORE, Arrowood prays for relief as follows:

17           1. For a declaration that Arrowood is not currently obligated, and was  
18 not obligated after November 12, 2007, to defend and/or indemnify Rylock and/or  
19 any Additional Insured in the Rylock Actions because the Arrowood Policies  
20 exhausted on November 12, 2007.

21           2. For a declaration that AIU is obligated to defend and indemnify  
22 Rylock and any Additional Insured in the Rylock Actions under the AIU Policies  
23 because the Arrowood Policies exhausted on November 12, 2007.

24           3. For equitable indemnity from AIU, or in the alternative, contribution  
25

1 from AIU, together with interest thereon all amounts Arrowood paid in defense or  
2 indemnity on behalf of Rylock and/or Additional Insured in the Rylock Actions  
3 under the Arrowood Policies which were incurred on or after November 12, 2007.

4 4. If the Court finds that Arrowood is not entitled to indemnity and/or  
5 contribution from AIU, then Arrowood, in the alternative, prays for indemnity  
6 and/or contribution from Acceptance, TIG, American Safety Risk and American  
7 Safety Indemnity all amounts Arrowood paid in defense or indemnity on behalf of  
8 Rylock and/or Additional Insured in the Rylock Actions under the Arrowood  
9 Policies which were incurred on or after November 12, 2007.

10 5. For costs of suit incurred in this action.

11 6. For reasonable attorney's fees.

12 7. For such other and further relief as this Court deems just and proper.

13 Dated: July 10, 2008

TRESSLER, SODERSTROM, MALONEY  
& PRIESS, LLP

15 By: 

Mary E. McPherson

Linda M. Corrie

Attorneys for Defendant/ Counterclaimant/  
Cross-Complainant

ARROWOOD INDEMNITY COMPANY  
(f/k/a Royal Indemnity Company, successor-  
in-interest to Royal Insurance Company of  
America)

21 LA-#16983 (1458-442)

**PROOF OF SERVICE**

*AIU Insurance Company v. Acceptance Insurance Company, et al.*  
US District Court, Northern District of California, San Francisco Division  
Case No. C 07 5491 PJH

I am over the age of eighteen years and not a party to the within action. I am employed by TRESSLER, SODERSTROM, MALONEY & PRIESS, LLP, whose business address is 3070 Bristol Street, Suite 450, Costa Mesa, CA 92626.

On July 11, 2008, I served the within document(s) described as: **ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT ARROWOOD TO FIRST AMENDED COMPLAINT AND COUNTERCLAIM CROSS-COMPLAINT** on the interested parties in this action:

☐ By placing ☐ the original ☐ true copy(ies) thereof enclosed in sealed envelope(s) ☐ addressed as follows ☐ addressed as stated on the attached mailing list:

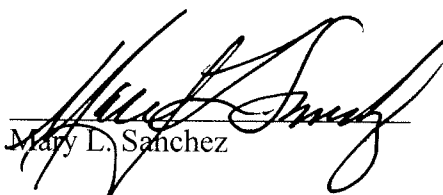
**SEE ATTACHED SERVICE LIST**

☐ **BY MAIL** (CCP § 1013) - I deposited such envelope(s) for processing in the mailroom in our offices. I am "readily familiar" with the firm's practices of collection and processing correspondence for mailing. It is deposited with the U. S. Postal Service on that same day with postage thereon fully prepaid at Costa Mesa, California, in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC FILING AND SERVICE VIA CM/ECF** - On **July 11, 2008**, I filed the foregoing documents, described above through the use of the United States District Court's CM/ECF electronic filing system

☐ **BY FAX** (CCP § 1013; CRC 2.306) - by transmitting said document(s) by electronic fax at approximately \_\_\_ a.m./p.m. at 3070 Bristol Street, Suite 450, Costa Mesa, California 92626 to the respective fax number(s) of the party(ies) as stated on the attached mailing list. The fax machine I used complied with California Rules of Court, Rule 2.301, and no error was reported by the machine. Pursuant to California Rules of Court, Rule 1013(e), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration.

☒ (FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

  
Mary L. Sanchez

LA-#100114 (1458-442)

**SERVICE LIST**

*AIU Insurance Company v. Acceptance Insurance Company, et al.*  
 US District Court, Northern District of California, San Francisco Division  
 Case No. C 07 5491 PJH

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<p>Thomas A. Foster, Esq.          Gannon Johnson, Esq.  <b>Marrone, Robinson, Frederick          &amp; Foster</b>          111 North First Street, Suite 300          Burbank, CA 91502-1851          Telephone: (818) 841-1144          Facsimile: (818) 841-0746          tomfoster@mrfflaw.net          gannonjohnson@mrfflaw.net</p> <p><i>Attorneys for Defendant</i>  <i>Acceptance Insurance Company</i></p>	<p>David S. Blau, Esq.  <b>Law Office of David S. Blau</b>          6080 Center Drive, Suite 210          Los Angeles, CA 90045          Telephone: (310) 410-1900          Facsimile: (310) 410-1901          E-Mail: david@blaulaw.net</p> <p><i>Attorneys for Defendant American</i>  <i>Safety Risk Retention Group, Inc.</i></p>

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